2884

SUPREME COURT OF THE UNITED STATES.

No. 276.

THE UNITED STATES, APPELLANTS,

vs.

FRANCISCO PICO AND AL.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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GIDEON, PRINT.

Transcript of the proceedings in case No. 602—*Francisco Pico et al., claimants,* vs. *The United States, defendant—for the place named "Las Calaveras."*

OFFICE OF THE BOARD OF COMMISSIONERS

To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this eighteenth day of February, anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Francisco Pico et al., for the place named "Las Calaveras," was presented, and ordered to be filed and docketed with No. 602, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had, in their chronological order, to wit:

SAN FRANCISCO, *February* 19*th*, 1853.

In case No. 602, Francisco Pico et al., for the place named "Las Calaveras," the deposition of Wm. A. Richardson, a witness in behalf of the claimants, taken before Commissioner Hiland Hall, with document marked H. H. No. 1, annexed thereto, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *March* 26*th*, 1853.

In the same case the deposition of José Noriega, a witness in behalf of the claimants, taken before Commissioner Hiland Hall, was filed.

(Vide page 6 of this Transcript.)

SAN FRANCISCO, *April* 15*th*, 1853.

In the same case the deposition of Antonio Maria Pico, a witness in behalf of the claimants, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 10 of this Transcript.)

SAN FRANCISCO, *May* 2*d*, 1854.

Case No. 602 was ordered to be placed at the foot of the 1st class cases on the trial docket.

SAN FRANCISCO, *August* 4*th*, 1854.

Case No. 602 was submitted on argument.

In the same case the deposition of Juan B. Alvarado, a witness in behalf of the United States, taken before the commissioners sitting as a board, was filed.

SAN FRANCISCO, *October* 16*th*, 1855.

In the same case Commissioner Alpheus Felch delivered the opinion of the board rejecting the claim.

(Vide page 25 of this Transcript.)

And the following order was made, to wit:

(Vide page 26 of this Transcript.)

Petition.

To the honorable the Commissioners of the United States for the ascertainment and settlement of private land claims.

Your petitioner, Francisco Pico, respectfully represents that he claims to be owner of the tract of land known as "Las Calaveras," hereinafter described.

That the said land was granted to your petitioner by Pio Pico, Governor of Alta California, on the eleventh day of June, A. D. 1846, your petitioner having solicited a grant for the same on the first day of May, A. D. 1846, and reports to said governor in regard to the situation of the land, and the character of your petitioner, having been made to said governor by John A. Sutter, of New Helvetia, by Francisco Guerrero, alcalde of San Francisco, and by Manuel Castro, prefect of the first district, previously to the issuance of said grant.

That said petition, said reports, and the decree of concession of said Pico, with diseño or map of the land, *and* on file in the archives of the State of California in the possession of the surveyor general of the United States for said State, and that a fac simile, or traced copy of the same, duly certified by said surveyor general, is herewith submitted, and that said original grant will be duly exhibited and proved.

The said land is situated in Tuolumne county, and is bounded on the north by the Calaveras creek, on the *north* by the lands granted to William Gulnac and Andres Pico, on the west by the San Joaquin river, on the east by a meridian line, which, with the other boundaries, will include an area of eleven square leagues.

That your petitioner took possession of said land immediately after obtaining said grant, and has continued in possession thereof to the present time, and that he knows of no conflicting claim.

He therefore prays that his said claim and title to said land may be confirmed to your honorable board, and in duty, &c., &c.

CLARK, TAYLOR & BECKH,
Attorneys for Petitioners.

Filed in office February 18th, 1853.

GEO. FISHER, *Sec'y.*

Deposition of Wm. A. Richardson.

SAN FRANCISCO, *February 19th*, 1853.

On this day before Commissioner Hiland Hall came Wm. A. Richardson, a witness in behalf of the claimant, Francisco Pico, petition No. 602, and was duly sworn, his evidence being given in English.

The United States associate law agent was present.

Questions by Claimant.

Quest. 1. What is your name, age, and place of residence?

Ans. My name is Wm. A. Richardson; my age 58 years; I reside on my ranch of Sancelito, in Marin county.

Quest. 2d. Look on the document now shown to you marked H. H. No. 1, and attached to your deposition, purporting to be a grant from Pio Pico, and countersigned by José Matias Moreno, secretary to Francisco Pico, dated July 20th, 1846; state what you know concerning said document, and whether the signatures thereto are genuine.

Ans. I have looked at the document shown me and have recognised the signatures of Pio Pico and José Matias Moreno. I know they are their genuine signatures; have often seen these gentlemen write.

In answer to questions by the associate law agent, the witness says he has never seen the said document until to-day, and knows nothing in regard to it except in regard to the handwriting of the signatures.

WM. A. RICHARDSON.

Sworn and subscribed before me.

HILAND HALL,
Commissioner.

Filed in office February 19, 1853.

GEO. FISHER, *Sec'y.*

Deposition of Jose Noriega.

SAN FRANCISCO, *March* 26, 1853.

On this day before Commissioner Hiland Hall came José Noriega, a witness in behalf of the claimant, Francisco Pico, petition No. 602, and was duly sworn, his evidence being interpreted by the secretary.

The United States law agent was present.

Questions by Claimant.

Quest. 1. What is your name, age, and place of residence?

Ans. My name is Don José Noriega, my age fifty-three years, and I reside in the pueblo of San José.

Quest. State what you know concerning the land petitioned for upwards sixteen years.

Ans. In the month of April, 1846, the petitioner applied to Capt. Sutter to inform the government of the land being unoccupied. About the year 1846, the Indians in the neighborhood of the land petitioned for became very hostile, stealing cattle and committing other depredations to such an extent as to render the possession and occupancy of the land impossible, and the attempt to take actual possession of the same dangerous; this state of things continued up to the time the Americans took possession of California.

I have heard that the petitioner has, during this year, placed men upon the land, who have cultivated it, built corrals thereon, and otherwise improved it, using it for the usual purposes of a rancho. The land is situated on the Calaveras river, near Stockton.

JOSÉ NORIEGA.

Sworn and subscribed before me.

HILAND HALL,
Commissioner.

Filed in office March 26th, 1853.

GEO. FISHER, *Sec'y.*

Deposition of Juan B. Alvarado.

UNITED STATES OF AMERICA,
State of California.

SAN FRANCISCO, *August 4th*, 1854.

Personally appeared this day, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board, Juan B. Alvarado, a witness in behalf of the United States, in case No. 602 on the docket of the said board, wherein Francisco Pico is the claimant against the United States for the place named "Las Calaveras," who, upon being duly sworn, deposed as follows, to wit:

Questions by the United States Law Agent.

Ques. 1. Are you acquainted with Francisco Pico, the claimant in this case?

Ans. I am.

Ques. 2. What is his relationship to Pio Pico, the former governor of California?

Ans. I believe he is a cousin to him; they are the sons of two brothers.

Questions by the Counsel for the Claimant.

Quest. 1. What was the occupation of Francisco Pico after the war with the United States broke out in 1846?

(Objected to by the United States law agent, as not being cross-examination.)

Ans. He was occupied in the military service of the country,

specially as carrier, express rider, and such other service which required the activity of a man mounted on horseback.

Direct examination by the United States Law Agent.

Ques. 1. Was Francisco Pico a man of family at the time referred to in the deposition?

Ans. I believe he was not a married man; his family consisted of his mother and brothers and sisters, as I understood, but cannot say whether he was a married man.

JUAN B. ALVARADO.

Subscribed and sworn to before the commissioners, sitting as a board, this 4th day of August, A. D. 1854.

Attest: GEO. FISHER.

Filed in office August 4th, 1854.

GEO. FISHER, *Sec'y.*

Deposition of Anto. Maria Pico.

SAN FRANCISCO, *April 15th*, 1853.

On this day before Commissioner Harry J. Thornton came Antonio Maria Pico, a witness on the part of the claimant, Francisco Pico, petition No. 602, and was duly sworn, his evidence being given in the Spanish and interpreted by the secretary.

Questions by Claimant.

Quest. 1. What is your name, age, and place of residence?

Answer. My name is Antonio Maria Pico; my age forty-three years; and my residence in San José, California.

Quest. Are you acquainted with the handwriting of Pio Pico and José Matias Moreno? If yea, look upon the document now shown you, filed with, and marked Exhibit 1 to, the deposition of Wm. A. Richardson in this case, and state if the signatures of those persons where they occur in and upon said document are their genuine signatures.

Ans. I am acquainted with the handwriting of the persons named, and have examined the document so marked, and state that their signatures in and upon the same are their genuine signatures.

Quest. 2. Are you acquainted with the land claimed in this case called "Las Calaveras;" if yea, state what you know of its present settlement, occupation, or cultivation—when, by whom, and how?

Ans. I am acquainted with the rancho; it was occupied by me, for and as the agent or tenant for the grantee, from the year 1847 to this time; it could not have been sooner occupied, or was not on account of the civil commotions in the country; I built a wooden house, in which the people lived who were in service on the ranch, who attended to the stock, and cultivated enough for support.

U. S. law agent present.

ANTONIO MA. PICO.

Ans. In the month of April, 1846, the petitioner applied to Capt. Sutter to inform the government of the land being unoccupied. About the year 1846, the Indians in the neighborhood of the land petitioned for became very hostile, stealing cattle and committing other depredations to such an extent as to render the possession and occupancy of the land impossible, and the attempt to take actual possession of the same dangerous; this state of things continued up to the time the Americans took possession of California.

I have heard that the petitioner has, during this year, placed men upon the land, who have cultivated it, built corrals thereon, and otherwise improved it, using it for the usual purposes of a rancho. The land is situated on the Calaveras river, near Stockton.

JOSÉ NORIEGA.

Sworn and subscribed before me.

HILAND HALL,
Commissioner.

Filed in office March 26th, 1853.

GEO. FISHER, *Sec'y.*

Deposition of Juan B. Alvarado.

UNITED STATES OF AMERICA,
State of California.

SAN FRANCISCO, *August 4th*, 1854.

Personally appeared this day, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board, Juan B. Alvarado, a witness in behalf of the United States, in case No. 602 on the docket of the said board, wherein Francisco Pico is the claimant against the United States for the place named "Las Calaveras," who, upon being duly sworn, deposed as follows, to wit:

Questions by the United States Law Agent.

Ques. 1. Are you acquainted with Francisco Pico, the claimant in this case?

Ans. I am.

Ques. 2. What is his relationship to Pio Pico, the former governor of California?

Ans. I believe he is a cousin to him; they are the sons of two brothers.

Questions by the Counsel for the Claimant.

Quest. 1. What was the occupation of Francisco Pico after the war with the United States broke out in 1846?

(Objected to by the United States law agent, as not being cross-examination.)

Ans. He was occupied in the military service of the country,

specially as carrier, express rider, and such other service which required the activity of a man mounted on horseback.

Direct examination by the United States Law Agent.

Ques. 1. Was Francisco Pico a man of family at the time referred to in the deposition?

Ans. I believe he was not a married man; his family consisted of his mother and brothers and sisters, as I understood, but cannot say whether he was a married man.

JUAN B. ALVARADO.

Subscribed and sworn to before the commissioners, sitting as a board, this 4th day of August, A. D. 1854.

Attest: GEO. FISHER.

Filed in office August 4th, 1854.

GEO. FISHER, *Sec'y.*

Deposition of Anto. Maria Pico.

SAN FRANCISCO, *April 15th*, 1853.

On this day before Commissioner Harry J. Thornton came Antonio Maria Pico, a witness on the part of the claimant, Francisco Pico, petition No. 602, and was duly sworn, his evidence being given in the Spanish and interpreted by the secretary.

Questions by Claimant.

Quest. 1. What is your name, age, and place of residence?

Answer. My name is Antonio Maria Pico; my age forty-three years; and my residence in San José, California.

Quest. Are you acquainted with the handwriting of Pio Pico and José Matias Moreno? If yea, look upon the document now shown you, filed with, and marked Exhibit 1 to, the deposition of Wm. A. Richardson in this case, and state if the signatures of those persons where they occur in and upon said document are their genuine signatures.

Ans. I am acquainted with the handwriting of the persons named, and have examined the document so marked, and state that their signatures in and upon the same are their genuine signatures.

Quest. 2. Are you acquainted with the land claimed in this case called "Las Calaveras;" if yea, state what you know of its present settlement, occupation, or cultivation—when, by whom, and how?

Ans. I am acquainted with the rancho; it was occupied by me, for and as the agent or tenant for the grantee, from the year 1847 to this time; it could not have been sooner occupied, or was not on account of the civil commotions in the country; I built a wooden house, in which the people lived who were in service on the ranch, who attended to the stock, and cultivated enough for support.

U. S. law agent present.

ANTONIO MA. PICO.

Sworn to and subscribed before me, this 15th of April, 1853.

HARRY J. THORNTON,
Commissioner.

Filed in office April 15th, 1853.

GEO. FISHER, *Sec'y.*

Espediente.

[1 S. D. K.]

S'or Juez de Paz y Coman'te Militar Dn. Juan Augustin Sutter:

Francisco Pico, Mejicano por nacimiento y vecino de Monterey, ante V. respectuosamente me presento y digo; que teniendo visto un parage baldio en estos rumbos de este establecimiento que es de abajo de las Calaberas a la balsa de las Cuatro, cerca al sur y para la parte del rio de San Joaquin, Sierra Nevada segun dice por el diseño que acompaña, pido se digne concederme el *el* informe de ocho sitios de ganado mayor para poder causer las tramites con el ex'mo s'or gobernador de este departamento.

Por tanto suplico se sirva escederme lo que pido de lo que reciveré gracia.

Nueva Elvecia, 1o de Mayo, de 1846.

FRAN'CO PICO.

Aurego.

Certificio que el terreno que solicita el S'or Francisco Pico esta baldio.

Nueva Helvetia, Mayo 1o, de 1846.

J. A. SUTTER.

[3 S. D. K.]

[*Here follows a map—original, page* 10.]

[4 S. D. K.]

S'or Sub Prefecto del 2o Distrito:

Fran'co Pico, Mejicano, por nacimiento y vecino de Monterey, ante V. con el debido respecto y como mas halla lugar en derecho se presenta y dice. Que habiendo visto un terreno baldio en estos ranchos del establecimiento del Sacramento, que es de el Arroyo de las Calaberas, a la bolsa de las Cuatro asi al sur y para la parte del rio de San Joaquin y Sierra Nevada, y como d'ho terreno se halla en el partido de su mando, solicito la informacion de V. acompañandole una representacion y diceño que se le hiso al encargado de justicia de d'ho establicimiento del que obtuve una certificacion y para darle el giro que convenga, pido se digne V. concederle el informe que convenga para que pueda con toda inteligencia seguir

los tramites correspondientes segun estilo P. F. A. V. suplico se sirva conceder lo pedido. Jurando lo necesario.

Da. Pueblo de S. José de Guadalupe, 8 de Mayo, 1846.

FRANCISCO PICO.

Sirbase V. recibir la presente en papel comun, por no haber del sellado que corresponde.

YERBA BUENA, *Mayo* 12, *de* 1846.

En vista de la presente y certificacion del encargado del rio del Sacramento, sobre el pedido de ocho sitios de ganado mayor, y en virtud de no haber autoridad por el rumbo pedido por se practicaron como se deben por lo que posean el S'or suf'o del 2o distrito, y que resulto lo que tenia a bien y le de el g'ro que uello convenga.

FRAN'CO GUERRERO.

Ex'mo S'or Gobernador:

Impuesta la pref'a de mi cargo de la presente, instancia en que el cuid'o Fran'co Pico, pretende el parage nombrado las "Calaveras," ó la bolsa de los Cuatros, el informe de la sub prefectura y del juez de Nueva Helvecia, las cualidades del solicitante y lo demas que se manifiesta, es de paucer que de le conceda a la parte dicha la propiedad del mismo terreno de las Calaveras, que solicita en estencion de ocho sitios de ganado mayor, si a V. E. asi lo pauciere conveniente.

MANUEL CASTRO.

Monterey, Mayo 18, de 1846.

[5 S. D. K.]

En vista de las informes que obran en este espediente en favor del interesado librese el titulo que auque la propriedad sin perjuicio de lo que pertenece a lo que pertenece a las colindantes.

PICO.

Angeles, Junio 11, de 1846.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and, as such, now having in my office and under my custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify, that the five preceding and hereunto attached pages of tracing paper, numbered from one to five inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially,

and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., this 26th day of August, 1852.

SAMUEL D. KING,
Surveyor G'l Cal.

Filed in office February 18, 1853.

GEO. FISHER, *Sec'y.*

Translation of Expediente.

To the Justice of the Peace and Military Commander, Don Juan Augustin Sutter:

I, Francisco Pico, a Mexican by birth and resident of Monterey, respectfully appear before you and say, that having seen a vacant location in the direction of this establishment, which is from the "Arroyo de las Calaveras" to "La Caja de las Cuatro," towards the south, and on the side of the river of San Joaquin and Sierra Nevada, as is shown in the sketch I accompany, I request you to give me a report for the grant of eight square leagues, in order that the procedure can be carried on by the excellent sir governor of this department. Therefore I ask you to accede to my request, by which I shall receive favor.

Nueva el Cerna, 1 May, 1846.

On request. FRANCISCO PICO.

(*In the Margin.*)

I certify that the land which Don Francisco Pico solicits is vacant.

Nueva Helvetia, May 1st, 1846.

J. A. SUTTER.

Sir Sub Prefect of the 2d District:

Francisco Pico, a Mexican by birth and resident of Monterey, with due respect and as best may be consistent with law, says before you, that having seen a tract of vacant land in the direction of the establishment of Sacramento, which is from the Arroyo de las Calaveras to "La Bolsa de los Cuatro," towards the south, and on the side of the river San Joaquin and Sierra Nevada, and as said land is situate in the district under your command, I solicit your report, accompanying a representation and sketch which was made to the judicial commissioner of said establishment, from whom I obtained a certificate, and to give it the suitable circulation. I ask you to be pleased to give the report you may think proper, so that the corresponding judicial procedure may be followed with a thorough understanding of the matter. Therefore I pray you to be pleased to grant my request, whereby I shall receive favor, swearing to what is necessary.

Ex Pueblo de S. José Guadalupe, 8th of May, 1846.

FRANCISCO PICO.

Please to receive the present on common paper, the corresponding stamped paper not being had.

(*In the Margin.*)

YERBA BUENA, *May* 12*th*, 1846.

In view of the present, and of the certificate of the judicial commissioner of Sacramento, about the solicitation of eight square leagues of land, and on account of not having authority in the locality asked for, there has not been taken the necessary action; therefore it is referred to the prefect of the 2d district, that he may resolve what he shall deem proper, and give it the more appropriate circulation.

FR'CO GUERRERO.

Excellent Sir Governor:

The prefectura in my charge, in view of the present instance, wherein the citizen Fr'co Pico claims the location called "Las Calaveras" to "la Bolsa de las Cuatro," the report of the sub-prefecture and that of the justice of Nueva Helvetia, the qualifications of the petitioner, and everything else set forth, is of opinion that the said party may be granted the ownership of the same land he solicits, called "Las Calaveras," in extent 8 square leagues, *of* it so shall appear convenient to your excellency.

Monterey, May 18th, 1846.

MAN'L CASTRO.

In view of the reports contained in this expediente, in favor of the interested party, let the title-deed be issued to secure the ownership without prejudice to what may belong to the bordering land owners.

Los Angeles, June 11th, 1846.

PICO.

Filed in office September 19th, 1855.

GEO. FISHER, *Sec'y.*

H. H. No. 1, *annexed to the Depo. of Wm. A. Richardson, taken before Com'r H. Hall.*

[SEAL.] Pio Pico, Gobernador Constitucional del Depart'o de las Californias:

Por cuanto el ciudadano Fran'co Pico, ha pretendido para su beneficio personal, y el terreno conocido con el nombre del arroyo de las Calaveras a balsa de las cuatro colindante por el N. con el mismo arroyo de las Calaveras, por el S. con el terreno concedido a Don Guillermo Gulnak, y el de Don Andres Pico, por el E. con el llano y por el O. con las esteros practicadas previamente las diligencias, y averiguaciones consernientes, usando de las facultades que me hallo autorizado por el sup'mo gobierno a nombre de la

nacion Mejicana, he venido en conceder al espresado Señor Pico el terreno, mencionado, declarando le la propriedad de el por las presentes de conformidad con la ley de 18 de Agosto, de 1824, y reglamento de 21 de Noviembre, de 1828, a reserva de la aprobacion de la ex'ma asamblea departamental, y bajo las condiciones siguientes:

1a. Podra cercarlo sin prejudicar las travesias caminos, y servidumbres, lo disputara libre y esclusivamente destinandolo al uso o cultivo que mas le convenza.

2o. Solicitara del juez respectivo le de la posecion juridica en vertud de este despacho por el cual se demarcaran los linderos con las majoneras respectivos.

3o. El terreno de que se hace donacion es de ocho sitios de ganado mayor. El juez que diere la posecion lo hara medir conforme a ordenanza sin prejucio de las terrenos concedidas a los Señores Gulnac y Pico, quedando el sobrante que resulta a beneficio de la nacion para los usos convenientes.

En consecuencia mando que teniendose el presente titulo por firmé y valedero, se tome razon de el en el libro que corresponde y se entregue al interesado para su resguardo, y demas fines.

Dado en la ciudad de los Angeles, en este papel comun por falta del sellado a veinte de Julio, de mil ochocientos cuarenta y seis.

JOSÉ MATIAS MORENO, PIO PICO.
S'rio Into.

Queda tomada razon de este superior despacho en el libro respectivo.

MORENO.

Filed in office February 19, 1853.

GEO. FISHER, *Sec'y.*

Translation of Grant.

Pio Pico, Constitutional Governor of the Departments of both Californias.

Whereas the citizen Francisco Pico has solicited for his personal benefit the land known by the name of arroyo de las Calaveras, or Bolsa de las Cuatro, bordering to the north on the same arroyo de las Calaveras; to the south on the land granted to Don Guillermo Gulnac and that of Don Andres Pico; to the east on the plain, and to the west on las Esteras; after having previously made the necessary investigation, and taken the necessary action in exercise of the powers I am authorized by the supreme government, in the name of the Mexican government, I have concluded to grant the said Pico the mentioned land, declaring it his property by these presents, in conformity with the law of the 18th of August, 1828, and regulations of 21st of November, 1828, under reservation of the approbation of the excellent departmental assembly, and under the following conditions:

1st. He may fence it without prejudice to the crossings, roads and servitudes; he will enjoy it fully and exclusively, appropriating it to the use or *cultivate* that may best suit him.

2d. He will solicit of the respective judge to give him juridical possession in virtue of this document, by whom the boundaries are to be marked with the respective landmarks.

3d. The land granted is eight square leagues, (sitios de ganado mayor.)

The judge who shall give the possession will cause it to be measured conformable to ordinance, without prejudice to the lands granted to Gulnac and Pico, leaving the surplus that may result to the benefit of the nation for convenient purposes.

Consequently I order that, the present title-deed being held firm and valid, it be entered in the corresponding book, and delivered to the interested party for his security, and other purposes.

Given in the city of Los Angeles on this common paper, for want of stamped paper, on the 11th of July, 1846.

PIO PICO. (Flourish.)

Filed in office September 19th, 1853.

GEO. FISHER, *Sec'y.*

Opinion of Board by Com'r Felch.

FRANCISCO PICO
vs.
THE UNITED STATES.

For the place called "Las Calaveras," in Tuolumne county, containing eight square leagues of land.

This claim is based on a grant to the claimant, signed by Pio Pico, and given in evidence; the document bears date July 20, 1846, which was subsequent to the conquest of the country by the Americans.

We held in John Wilson's case, (No. 50,) that the power of the governor of California to make grants under the Mexican law ceased on the raising of the American flag at Monterey, July 7, 1846.

Under this ruling the grant presented was without authority, and this claim based upon it cannot, therefore, be entitled to a confirmation.

Decree adverse to petition.

Filed in office October 16th, 1855.

GEO. FISHER, *Sec'y.*

Decree.

FRANCISCO PICO
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged

by the commission that the claim of the said petitioner is not valid, and it is therefore decreed that this application for a confirmation thereof be denied.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office October 16th, 1855.

GEO. FISHER, *Sec'y.*

And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that the transcripts of the proceedings and decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty-six pages, numbered from 1 to 26, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 602 on the docket of the said board, wherein Franciso Pico et al. are the claimants against the United States, for the place known by the name of "Las Calaveras."

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office) at San Francisco, California, this twenty-sixth day of January, A. D. 1856, and of the independence of the United States of America the eightieth.

[SEAL.]

GEO. FISHER, *Sec'y.*

Endorsed: Filed January 30th, 1856.

JOHN A. MONROE, *Clerk.*

Notice of Appeal.

FRANCISCO PICO et al. vs. UNITED STATES. } N 9.—Appeal.—Land Commission No. 602, "Las Calaveras."

To the Clerk of the United States Court for the northern district of California:

Please enter this as notice that Francisco Pico hereby appeals to

the said court from the decision of the board of commissioners appointed to ascertain and settle the private land claims in the State of California by the act of Congress of the 3d March, 1851, by which his claim to the tract called "Las Calaveras," and entered upon the docket of the said board as No. 602, was rejected by them.

FRANCISCO PICO.
By STANLY & KING, *his Att'ys.*

San Francisco, 21 February, 1856.

Endorsed: Filed February 21st, 1856.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Notice of Appeal.

District Court of the United States, northern district of California.

FRANCISCO PICO et al.
vs.
THE UNITED STATES. } No. 399.—Commissioner Docket No. 602.

Notice is hereby given, that the appeal in the above entitled case, from the decision of the United States board of land commissioners to the district court of the United States, will be prosecuted by the claimants therein in the said court.

J. CLARK,
Attorney for Claimant.

April 1st, 1856.

Endorsed: Filed April 1st, 1856.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Petition.

To the honorable District Court of the United States in and for the northern district of California:

FRANCISCO PICO, Appellant,
vs.
THE UNITED STATES, Appellees. } No. 399.

The petition of *the* Francisco Pico, by his attorney, represents, that this cause is an application for a review of the decision of the board of land commissioners, whereby the claim of said appellees was rejected, as appears by reference to the records in the case; that a transcript of the said records was filed in this court on the day of , and that the land claimed lies in the northern district, in the county of Calaveras; that said claim is valid. Wherefore appellees pray that the said decision of the board be reversed, and that this court decree the said title to be valid.

Respectfully, J. CLARK,
Att'y for Claimant.

Endorsed: Filed April 1st, 1856.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Appeal Petition.

FRANCISCO PICO et al.
vs.
THE UNITED STATES.
Docket No. 399.—Appeal.

To the Honorable Ogden Hoffman, jr., Judge of the United States District Court for the northern district of California:

The petition of Francisco Pico, a citizen of the United States, respectfully represents, that under the provision of the act of Congress of the 3d March, 1851, he presented a petition to the commissioners appointed under said act to examine claims to land in California, praying for the confirmation of his claim to the tract of land therein described, called "Las Calaveras," situate in the county of , under a decree of concession made in his favor by Governor Pio Pico on the 11th June, 1846, (and for which a title in form was issued by said governor on the 20th July, 1846,) and accompanied it by evidence of his title, and to which, for more full and particular description, he begs leave to refer.

That his said claim, being designated as No. 602 on the docket of the said commissioners, was rejected by them on the 16th October, 1855; that the said land is situate within the limits of the northern district of California; that a transcript of the proceedings and decision of the commissioners in the case was filed in the office of the clerk of the court for that district on the 30th January, 1856, and on the 21st February, 1856, notice was filed with said clerk that your petitioner appealed from such decision.

Your petitioner prays for a re-hearing of the case upon this appeal; that the said decision of the commissioners may be reversed and annulled, and that the court will make such decree and order as may be necessary and proper to recognise, confirm, and declare valid his title and claim to the premises mentioned and referred to in his said petition and evidence of claim.

And your petitioner will ever pray, &c.

FRANCISCO PICO.
By STANLY & KING,
His Attorneys.

Endorsed: Filed April 28th, 1856.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Answer.

In the United States District Court for the northern district of California.

FRANCISCO PICO et al., Appellants,
vs.
THE UNITED STATES, Appellees.
No. 399.

The respondents, for answer to the petition filed in this case, answer and say:

It is true that the lands mentioned in said petition, and in said transcript of the proceedings before the said board of commissioners, lie within the said northern district of California, and within the jurisdiction of this court; but these respondents deny that the alleged title to the said land is valid, and aver that the same is invalid, and pray that the decision of the said board be affirmed, and that the title of the petitioners be decreed to be invalid.

A. GLASSELL,
Acting U. S. Attorney.

Endorsed: Filed April 28th, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order to open Cause and correct Transcript.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 26th day of October, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the honorable Ogden Hoffman, district judge.

FRANCISCO PICO et al.
vs.
THE UNITED STATES. } No. 399.

This cause having been once submitted, and it appearing to the court that there is error in the transcript from the board of land commissioners, and an omission on the part of claimants to prove the handwriting of the Mexican authorities who made the grant, it is, on motion of claimant's counsel, ordered that the case be re-opened to correct said error, and to take additional testimony.

Endorsed: Filed October 26th, 1857.

JOHN A. MONROE, *Clerk.*
By J. EDGAR GRYMES, *Deputy.*

Espediente.—Translation and Stipulation.

[H. H. No. 1.]

Pio Pico, Gobernador Constitucional del Departamento de las Californias.

[SEAL.]

Por cuanto el cuidadano Francisco Pico, ha pretendido para su beneficio personal el terreno conocido con el nombre del arroyo de las Calaveras, o bolsa de los cuatro colindante por el N. con el mismo arroyo de las Calaveras, por el S. con el terreno concedido a Don Guillermo Gulnak y el de Don Andres Pico, por el E. con el llano y por el O. con las esteros practicadas previamente las averiguaciones y diligencias consernientes, usando de las facultades

con que me hallo autorizado por el supremo gobierno a nombre de la nacion Mejicana he venido en conceder al espresado Señor Pico, el terreno mencionado declarandole la propriedad de el por las presentes de conformidad con la ley de 18 de Agosto, de 1824, y reglamento de 21 de Noviembre, de 1828, a reserva de la aprobacion de la exm'a asamblea departamental y bajo las condiciones siguientes:

1a. Podra cercarlo sin prejudicar las travesias caminos y servidumbres; lo disfrutara libre y esclusivamente destinandolo al uso o cultivo que mas le convenga.

2a. Solicitara del juez respectivo le de la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos con las respectivas mojoneras.

3a. El terreno de que se hace donacion es de ocho sitios de ganado mayor. El juez que diere la posecion los hara medir conforme a ordenanza sin perjucio de los terrenos concedidas a los Señores Gulnak y Pico, quedando el sobrante que resulta a beneficio de la nacion para los usos convenientes. En consecuencia mando que teniendose el presente titulo por firma y valedero, se tome razon de el en el libro que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en la ciudad de los Angeles, en este papel comun por falta del sellado a veinte de Julio, de mil ochocientos cuarenta y seis.

PIO PICO.

JOSÉ MATIAS MORENO, *S'rio Into.*

Queda tomada razon de este superior despacho en el libro respectivo.

MORENO.

No. 602.—Francisco Pico.—Las Calaveras.

H. H. No. 1, annexed to the depo. of Wm. A. Richardson, taken before Commissioner Hiland Hall.

Filed in office February 19th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Rec. of Evid., vol. 18, p. 519.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such, having on file in my office, and in my charge and custody, the records and papers of the late board of United States commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify, that the four preceding and hereunto annexed pages of tracing paper exhibit a true and accurate copy

of a certain document filed in case No. 602 on the docket of said board, (with the endorsements thereon,) and now on file in this office.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of [SEAL.] San Francisco, this 13th day of August, 1857.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress "providing for the survey of public lands in California, and for other purposes," approved March 3d, 1855.

The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California,) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original.

Translation.

Pio Pico, Constitutional Governor of the Department of the Californias.

[L. S.]

Whereas the citizen Francisco Pico has solicited for his personal benefit the land known by the name of Arroyo de las Calaveras, or the Bolsa de las Cuatro, bordering on the north on the same Arroyo de las Calaveras, to the south on the land granted to Don Guillermo Gulnac, and that of Don Andres Pico, to the east on the plain, and to the west on Los Esteros, after having previously made the necessary investigation, and taken the necessary action, in exercise of the powers I am authorized by the supreme government, in the name of the Mexican nation, I have concluded to grant the said Pico the mentioned land, declaring it his property, by these presents, in conformity with the law of the 18th of August, 1824, and regulations of 21st of November, 1828, under reservation of the approbation of the excellent departmental assembly, and under the following conditions:

1st. He may fence it, without prejudice to the crossings, roads, and servitudes; he will enjoy it freely and exclusively, appropriating it to the use or culture that may best suit him

2d. He will solicit of the respective judge to give him juridical possession in virtue of this document, by whom the boundaries are to be marked with the respective landmarks.

3d. The land granted is eight square leagues (sitios de ganado mayor.) The judge who shall give the possession will cause it to be measured conformable to ordinance, without prejudice to the

lands granted to Gulnac and Pico, leaving the surplus that may result to the benefit of the nation, for convenient purposes.

Consequently, I order that, the present title-deed being held firm and valid, it be entered in the corresponding book, and delivered to the interested party for his security and other purposes.

Given in the city of Los Angeles, on this common paper, for want of stamped paper, on the 20th of July, 1846.

PIO PICO. (Flourish.)

JOSÉ MATIAS MORENA,
(Flourish,)
Sec'y Int.

This superior title remains entered in the respective book.

MORENO. (Flourish.)

I, J. Edgar Grymes, hereby certify that the above is a correct translation, to the best of my ability, knowledge, and belief.

J. EDGAR GRYMES.

It is stipulated that the foregoing shall be admitted on the trial of this case as a correct translation of the original document, a traced copy of which is hereto attached.

STANLY & KING,
For Claimants.
P. DELLA TORRE,
U. S. Attorney.

Endorsed: Filed November 9th, 1857.
JOHN A. MONROE, *Clerk.*
By J. EDGAR GRYMES, *Deputy.*

Deposition of Juan B. Alvarado.

United States District Court, northern district of California.

FRANCISCO PICO et al.
vs.
THE UNITED STATES.

SAN FRANCISCO, *November 9th*, 1857.

On this day before J. Edgar Grymes, a special commissioner and referee of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Juan B. Alvarado, a witness produced on behalf of the claimants, in case No. 399, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 602 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, U. S. dist. att'y, and Stanly & King for claimants.

Questions by Claimant's Counsel.

1st ques. What is your name, age, and place of residence?

1st ans. My name is Juan B. Alvarado; I am 48 years old; and I reside at San Francisco for the present.

2d ques. Please look at the paper produced from the surveyor general's office, purporting to be the original expediente in this case, and of which a copy is to be found in the transcript; and if so, please say if the handwriting of John A. Sutter, Francisco Guerrero, Manuel Castro and Governor Pico, are their genuine signatures?

2d ans. They are all their genuine signatures.

Cross-examination.

3d ques. Is the signature dated Angeles, June 11th, 1846, at the end of the expediente, the usual signature of Pico?

3d ans. I think that it is his usual signature. That is the way that he commonly signed his name.

4th ques. Was Governor Pico in the habit of signing his name, when governor, single Pico, or did he not sign Pio Pico?

4th ans. He was in the habit of signing both ways. We call when signed with one name, as Pico alone, "media firma."

5th ques. Look at the letter "P" in the word Pico, and state if he usually wrote it like it is there?

5th ans. The top part of the "P" looks a little longer, but I judge that the name was written in a hurry, and that is the way it happened. I am well acquainted with the handwriting of Pio Pico; I have seen him write several times.

It is admitted that the original document here produced from the surveyor general's office is copied on pages 13 and 14 in the transcript filed in this case, together with the map.

JUAN B. ALVARADO.

Sworn to and subscribed before me, this 9th day of November, A. D. 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed November 9th, 1857.
JOHN A. MONROE, *Clerk.*
By J. EDGAR GRYMES, *Deputy.*

Affidavit of David F. Douglass.

In the District Court of the United States for the northern district of California.

THE UNITED STATES vs. FRANCISCO PICO. } Las Calaveras—No. 399.

David F. Douglass, being duly sworn, deposes and says: I came to California in November, 1848, and settled on the river Calaveras in July, 1849, where I have made my home ever since; I am acquainted with the rancho Las Calaveras; Antonio Maria Pico

showed me the papers purporting to be the title-papers of this ranch, in June or July, 1853, at a settler meeting in San Joaquin county; I saw no improvements on the ranch, and am pretty well acquainted with the whole of it; I have seen cattle all over it; I never heard of the grant until the year 1853; I know of no improvements made by any of the claimants of this ranch upon it since I first knew it. When I say, above, I saw no improvements on the ranch, I mean when I first knew it. I saw no marks of former inhabitation on the ranch, and never heard of any; there were no cattle on it except Mr. Webber's or Mr. Hitchcock's, when I knew it, and some of my own; and further deponent saith not.

DAVID F. DOUGLASS.

Sworn to before me.

JOHN A. MONROE,
U. S. Commissioner.

It is hereby stipulated that this affidavit be admitted as evidence, as fully as if the deposition of the witnesses had been taken regularly in all respects.

CALHOUN BENHAM,
On part of the United States.
STANLY & KING,
Attorneys for Claimants.

Endorsed: Filed December 17th, 1857.
JOHN A. MONROE, *Clerk.*

Payment to David F. Douglass.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Thursday, the seventeenth day of December, in the year of our Lord one thousand eight hundred and fifty-seven. Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
FRANCISCO PICO et al. } No. 399.

On application of P. Della Torre, esq., U. S. attorney, it is ordered, that the marshal of the United States for this district pay David F. Douglass the sum of one dollar and fifty cents, for one day's attendance as a witness in the above case on the part of the U. S., and the further sum of twelve dollars and fifty cents for his mileage—250 miles, at 5c.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed December 17th, 1857.
JOHN A. MONROE, *Clerk.*

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

David F. Douglass, being duly sworn, says that, in obedience to a writ of subpœna, he attended as a witness in the within case on the part of the United States, and that he is justly and lawfully entitled to the sum of fourteen dollars for his mileage and attendance, and that he has received no part thereof.

DAVID F. DOUGLASS.

Sworn before me this 17th December, 1857.

J. EDGAR GRYMES,
Deputy Clerk.

Endorsed: Filed December 17th, 1857.

JOHN A. MONROE,
Clerk.

Stipulation and Affidavit of Thos. O. Larkin.

In the District Court of the United States for the northern district of California.

FRANCISCO PICO et al.
vs.
THE UNITED STATES. } No. 399.

It is hereby stipulated that the affidavit of any witness, of unexceptionable character, proving the handwriting of John A. Sutter to the expediente in this case, shall be admitted on the hearing of this case as fully as if the deposition of the witness had been regularly taken, with liberty to the United States to take any evidence relating said affidavit, if deemed necessary by the district attorney.

STANLY & KING,
For Claimant.

CALHOUN BENHAM,
On part of the United States.

Approved.

P. DELLA TORRE,
U. S. District Attorney.

In the District Court of the United States for the northern district of California.

FRANCISCO PICO et al.
vs.
THE UNITED STATES. } No. 602 L. C.—p. No. 399 U. S. Dist. Court.

Thomas O. Larkin, being duly sworn, says he has examined the expediente in this case, on file in the office of the surveyor general of the United States, and the entry on said expediente purporting to be in the handwriting of John A. Sutter, certifying the land petitioned for was vacant; that he is acquainted with the handwriting of said Sutter, and believes the entry above referred to is in his own proper handwriting; the entry referred to is in these

words: Certifico que el terreno que solicita el Señor Dn. Francisco Pico esta valdio.

Nueva Helvetia, Mayo 1, de 1846.

J. A. SUTTER,
THOMAS O. LARKIN.

Subscribed and sworn before me this 22d day of December, A. D. 1857.

[SEAL.] F. J. THIBAULT,
Notary Public.

This affidavit of Thos. O. Larkin is admitted to be read on the hearing of this case, according to the annexed stipulation.

Approved. CALHOUN BENHAM,
For U. S.
P. DELLA TORRE,
U. S. Dist. Att'y.

Endorsed: Filed December 23d, 1857.
JOHN A. MONROE,
Clerk.

Opinion delivered by his Honor Ogden Hoffman, Judge U. S. Dist. Court.

FRANCISCO PICO et al.
vs.
THE UNITED STATES.

The expediente produced from the archives in this case contains the following documents:

1. A petition by the claimant to the justice of the peace and military commander Don Juan A. Sutter, requesting a favorable report for the grant of the land mentioned in the petition and delineated on the map which accompanied it. This petition is dated May 1, 1846. In the margin of this petition is a certificate by Sutter, dated on the same day, that the land solicited is vacant.

2d. A petition by the claimant to the sub-prefect of the 2d district, soliciting his report to accompany the representation and diseño previously presented to the judicial officer of said establishment, from whom the petitioner had already obtained a certificate, so that further proceedings may be taken with a thorough understanding of the matter. This petition is dated May 8th, 1846. In the margin is a note by Francisco Guerrero, dated May 12th, 1846, in which he declines to act in the matter, not having the necessary authority, and he refers it to the prefect of the 2d district, "to resolve what he shall deem proper."

3. A report of the prefect Manuel Castro, dated May 18th, 1846, in which he states that in view of the petition, the report of the sub-prefect, and that of the judge of Nueva Helvetia, the qualifications of the petitioner, and everything else, he is of opinion that

the said party may be granted the ownership of said land, "if it shall appear convenient to your excellency."

3d. An order of the governor, as follows: "In view of the reports contained in this expediente in favor of the interested party, let the title issue to secure the ownership without prejudice to what may belong to the bordering land owners.

"Angeles, June 11th, 1846.

PICO."

The claimant has also produced the final title issued in pursuance of the above order; it is dated, however, on the 20th July, 1846, about 13 days after the capture of Monterey. The claim was rejected by the board on the ground that the final title issued after the occupation of the country by the American forces. It must be admitted that after California was subjected to the American arms no Mexican authority could do any act which could affect the rights of the United States to the public property. U. S. vs. Fremont, 17 How., 563. "The civil and municipal officers who continued to exercise their functions did so under the authority of the American Government." Ib.

It is not, however, easy to determine the precise period at which the Mexican authority ceased de facto to exist, and at which California must be deemed to have been subjected to our arms. The political branch of our Government seem to have indicated the 7th July, 1846, the date of the capture of Monterey, as the period at which the conquest is deemed to have been effected. Act of 1851, § 14. It is to be considered, however, that Los Angeles, the capital of the country, was not taken until some months later; the governor continued in the exercise of his functions until August, and regular sessions of the departmental assembly seem to have been held for some time afterwards.

But assuming the earlier date as the period when the powers of the Mexican functionaries ceased, the question arises whether the circumstance that the final document issued 13 days after taking of Monterey is a fatal objection to the claim.

From the expediente already referred to, we find that as early as the month of May all the proceedings were had preliminary to the issuance of the final document. A petition was presented with favorable reports, and accompanied by a desiño; and the governor, on the 11th June, accedes in effect to the petition, and orders the final title to be issued to secure the ownership. So far as the governor's discretion was concerned he had fully exercised it, and had determined to grant the land.

If the disturbed state of public affairs or the neglect of the secretary have prevented the performance of the merely ministerial act of drawing out the title in form and presenting it for signature of the governor, it seems to us that such an omission ought not to

invalidate the inchoate or incipient title which the petitioner had acquired by the previous proceedings.

In the case of Rafael Sanchez vs. The United States, which depended on the same question as that raised in this case, the judge of the southern district of this State decreed in favor of the claimant. That decision has been acquiesced in by the United States, and the appeal to the Supreme Court dismissed.

In the reasoning and conclusions of the court in that case we entirely concur; and are of opinion that the petition, the favorable reports, and the order of the governor directing the title to issue, followed by the actual issuance of the title, at a period when the governor could hardly have anticipated the consequences of the capture of Monterey, and certainly before he could have been fully satisfied that the sovereignty had finally passed away from Mexico, constitute an equitable title, which the United States must respect.

A decree of confirmation must be entered.

Decree of Confirmation.

In the District Court of the United States for the northern district of California.

FRANCISCO PICO, Appellant,
vs.
THE UNITED STATES, Appellees.

Docket No. 399, Transcript No. 602—"Las Calaveras."—Decree of Confirmation.

At a stated term, held January 9th, 1858. This cause coming on this day to be heard upon the transcript of the proceedings and the decision of the board of land commissioners of the United States to ascertain and settle the private land claims in the State of California, and the papers and evidence in the case and the pleadings filed in this court, and counsel having been heard on the part of the United States and for the claimant—in consideration of all which the court is of opinion that there is error in the decision of the said board, and that the same should be, and is hereby, reversed.

And this court doth order, adjudge, and decree that the title of the said claimant to the land described in the said transcript is valid; and the same is hereby confirmed.

The land of which confirmation is hereby made is of the extent of eight square leagues, and no more, and is known by the name of "Arroyo de las Calaveras," bordering on the north on the said arroyo de las Calaveras, to the south on the lands granted to Don Guillermo Gulnac and that of Don Andres Pico, to the east on the plain, and to the west on Las Esteros, as represented on the map or diseño forming a part of the espediente, and of which a copy is filed with the papers of the case, and to which reference is to be had for a more particular identification of the tract hereby con-

firmed; provided, that the said quantity of eight square leagues should be contained within the limits and boundaries so described; but if they should embrace a less area, then that lesser area is hereby confirmed, and no more.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed January 9th, 1858.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order granting Appeal.

At a stated term of the district court of the United States of America, for the northern district of California, held at the court-room in the city of San Francisco, on Tuesday, the second day of February, in the year of our Lord one thousand eight hundred and fifty-eight. Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES ads. FRANCISCO PICO et al. } No. 399.—L. C. 302.

In this case, on application of P. Della Torre, esq., United States attorney, made in open court, it is ordered by the court that an appeal on behalf of the United States from the final decision of this court, rendered in said cause at the present term, be, and the same is hereby, granted; and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed February 2d, 1858.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed pages, from one to forty-eight inclusive, contain a full, true, and correct transcript of the record on file from the board of land commissioners, together with the pleadings, depositions, orders, opinion, and decree filed in this office in the case entitled The United States, appellants, vs. Francisco Pico et al., appellees.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, the third day of February, [SEAL.] A. D. 1858, and of the independence of the United States of America the eighty-second.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Filed 30th April, 1858.